



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

CHAM

May 23, 2013

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Craig Emhardt**
Tax Registry No. 936549
Patrol Borough Bronx Anti-Crime Unit
Disciplinary Case No. 2011-5911

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on March 26, 2013, and was charged with the following:

DISCIPLINARY CASE NO. 2011-5911

1. Said Police Officer Craig Emhardt, while assigned to the Patrol Borough Bronx Anti-Crime Unit, on or about and between April 22, 2010 and October 4, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on several occasions requested assistance in the prevention of the processing and adjudication of several summonses issued to several individuals.

P.G. 203-10, Page 1, Paragraph 5

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated April 16, 2013, Deputy Commissioner Martin G. Karopkin found the Respondent Guilty of the sole Specification in Disciplinary Case No. 2011-5911. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Emhardt's misconduct warrants the forfeiture of five (5) suspension days (to be served), twenty-five (25) vacation days (thirty [30] total penalty days), and one (1) year dismissal probation, as a disciplinary penalty.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

April 16, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Craig Emhardt
Tax Registry No. 936549
Patrol Borough Bronx Anti-Crime Unit
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The above-named member of the Department appeared before me on March 26, 2013, charged with the following:

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P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
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The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, an eight year uniformed member of the service (UMOS), is currently assigned to the Patrol Borough Bronx Anti-Crime Unit. Upon graduating from the Police Academy in 2005, he was initially assigned to the 40 Precinct, where he had worked from July 2005 to June 2008. Respondent testified that in June 2008, he was then transferred to his current command. Respondent stated that his current duties are, "We enforce violent crime throughout the Bronx in terms of deterring it, as well as attempting to apprehend criminals who involve themselves in it." Respondent testified that he has made approximately 300 arrests in his career.

Respondent acknowledged that he recalled a summons involving the mother of a sergeant. Respondent testified that he received a call from Sergeant Jason Whitlock, who used to be a police officer with Respondent in Bronx Anti-Crime. Respondent stated that Whitlock told him, "that earlier that day his mom had received a summons in the confines of the 40 Precinct and he knew that I used to work in the precinct, and asked me if there is anything I can do to help his mom." Respondent testified that Whitlock provided him with the information and Respondent then reached out to Police Officer Virgilio Bencosme. Respondent stated he asked Bencosme, "If there was anything he can do to help a sergeant that I used to work with mom." Respondent testified that Bencosme indicated that he would help and he asked Respondent to send him a text message containing the information needed for Bencosme to be able to locate the summons. Respondent acknowledged that he sent Bencosme the text message and that this was the end of his involvement with that particular summons. Respondent testified that to his

knowledge, the conversation of the text message regarding this summons was caught on tape from the investigation.

Respondent acknowledged that when he was questioned by the Internal Affairs Bureau (IAB) regarding “fixing any tickets”, he told IAB about another summons. Respondent stated, “I indicated to them that sometime prior to this incident we just spoke of, I had taken care of a summons for a confidential informant.” Respondent agreed working with the Bronx Anti-Crime Unit, they used confidential informants (CI). Respondent stated, “We do use them some people we use more than others, but yes, we do use them often.” When Respondent was asked what type of crimes, in his experience, his unit uses CIs for, Respondent stated, “Very often, they call us prior to a shooting occurring, they call us during a shooting, they call us when there is a robbery getting ready to take place, they call us often when there is a gun being transported or sold. And you know, normally, ordinarily, any informant we use generally pertains to a violent crime.” Respondent agreed that CIs “absolutely” helped the Bronx Anti-Crime Unit in the past.

In relation to the summons that was issued to the CI, Respondent remembered that there was a discussion taking place and he stated, “they were attempting to, you know, put the facts of it together and they were having a discussion, and I said to them during their discussion that I used to work in the 40 Precinct, and that I can reach out to somebody there, and you know, see if there is anything we can do in reference to the informant’s summons.” Respondent acknowledged that during the conversation he volunteered that information because it had occurred in the 40 Precinct and he stated, “They were attempting to find somebody that worked in the 40 so we can reach out to the

40 Precinct to, you know, find someone that could help us with it.” Respondent testified that he overheard, during the conversation, that the CI had gotten them “somewhere around 50 to 60 guns over the past allotted time period, and he is currently still working with them.” Respondent acknowledged that this informant seemed to be somebody that was “absolutely” valuable. Respondent testified that when he volunteered to do this, no one tried to stop him or tell him this wasn’t a good idea.

Respondent acknowledged that in his past experience, he has heard of CIs being assisted by the police in return for their assistance to the police. Respondent stated that once he had the CI’s information, “I called Officer Bencosme once again, I had a brief conversation with him explaining to him the basic circumstances that a summons was issued to an informant that we used. Officer Bencosme asked me several questions. At that point, I informed him that it was an informant, and you know, that we were attempting to have the summons taken care of for future use of the informant, that he will continue to work well with us.” When Respondent was asked if the summons was taken care of, he stated “I didn’t hear that it didn’t.” Respondent testified that it was his understanding that the CI continued to work with the Department. Respondent acknowledged that these were the only two times that he ever fixed tickets in his career and he has not done it since.

On cross-examination, Respondent testified that he did not personally work with the CI who was issued the summons and he stated, “And I indicated that to Internal Affairs that I had no knowledge of that specific informant.” Respondent further testified that the first time he encountered that CI, was during the conversation of the summons, which had been issued to this CI. Respondent testified that he was not given any

information, aside from the specifics of the moving violation summons, with respect to the CI's history with the Department and he stated, "I just know that he did work well with the Department in the past." Respondent stated that his knowledge of this came from him overhearing the general conversation that was taking place, but he stated that he did "absolutely not" have any direct confirmation of this himself.

Respondent testified that he didn't discuss the specifics with the other UMOS, regarding what his intent was going to be, when he reached out to Bencosme in the 40 Precinct regarding the summons. Respondent acknowledged that he never brought the issue of the summons issued to the CI to the attention of a supervisor. Respondent further acknowledged that at the time of the conversation that he overheard regarding the CI, he had himself worked with CIs. Respondent testified that he was aware that CIs have a handler and he stated, "They do. I am aware of that, and I am also aware that some informants don't have a handler." Respondent did "not know either way" if the CI whose ticket he was going to seek assistance for had a handler nor did Respondent ever make any inquiry to reach out to a handler. Respondent acknowledged that when he called the 40 Precinct, he went directly to a delegate. Respondent further acknowledged that he did not speak to a supervisor of the issuing officer.

Respondent acknowledged that he did not attempt to have the summons voided by having someone fill out a Summons Voidance Form (PD160-153). Respondent testified that he understood the purpose of a Summons Voidance Form and he stated, "To the best of my knowledge, it was only used, the Summons Voidance Form, if a Department auto that had a summons, or if the summons was prepared in error." Respondent acknowledged that he did not make any attempt to see whether or not a Summons

Voidance Form could be filled out in this particular case. Respondent further acknowledged that when he interjected in the conversation, that he was the one who decided that he was going to make the attempt to have the summons taken care of and no one asked him specifically to do this.

On redirect examination, Respondent acknowledged that the members of the Bronx Anti-Crime work as a team. Respondent further acknowledged that he felt that offering his services, based on the fact that he had worked in the 40 Precinct was helping his team members, who had an informant that needed assistance.

Upon questioning by the Court, Respondent testified that there were “two to three people” present at the meeting who were engaged in the actual conversation where this was discussed. When Respondent was asked if there was anybody in the rank higher than a police officer, Respondent stated, “There may have been. I don’t know specifically if there was or was not. There could have been.” Respondent acknowledged that they were already looking for some way of dealing with the summons before he volunteered to help.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has recommended that Respondent forfeit 25 vacation days, 5 suspension days to be served and that he be placed on one year dismissal probation.

This case is part of a series of cases arising from an investigation in Bronx County. Respondent is charged with having interfered with two summonses. Respondent was overheard on a wiretap talking about taking care of one summons. During his official Department interview, Respondent volunteered information about the second summons.

The first summons was the result of a call Respondent received from Sergeant Whitlock who he used to work for. Whitlock's mother had received a summons in the 40 Precinct and he knew that Respondent had previously worked there. Respondent called and then texted former Patrolman's Benevolent Association union delegate, Bencosme, who was the subject of the wiretap. I find no mitigation with regard to this summons.

The second summons is different. Respondent volunteered information about this summons which was apparently not captured by any wiretap. He noted that in his current command, Patrol Borough Bronx Anti-Crime Unit, officers sometimes work with CIs. He indicated that one of the CIs working with his unit had received a summons in the 40 Precinct. He did not know the information personally but had been advised that the CI was a productive and useful one. The members of his team were attempting to determine how to take care of the summons for the CI. Respondent, who again, was familiar with members of the 40 Precinct, volunteered to take care of the matter and called Bencosme.

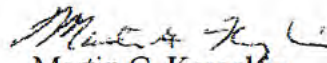
Obviously Respondent and or his colleagues in the Anti-Crime Unit should have gone through appropriate channels. But the purpose of Respondent's action was job related. There was no personal gain nor was he doing anyone a personal favor.

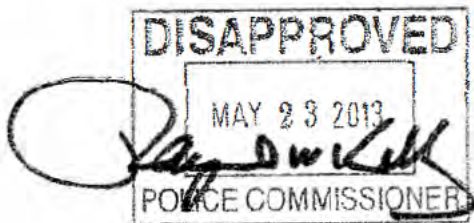
Respondent's high arrest numbers and well documented excellent performance as police officer (see Confidential Memorandum attached hereto) give credence to his claim that he believed he was acting in furtherance of a legitimate law enforcement purpose. This is a significant and genuine mitigating factor.

It is also worth noting that there is no charge regarding Respondent's conduct vis-à-vis the informant. Put another way there is no indication that Respondent violated any rule or procedure with regard to confidential informants.

As a result I cannot agree with the Department's recommendation in this case. Bearing in mind that if Respondent had only had one summons he would have been offered a Command Discipline with the loss of ten vacation days, I am recommending as a penalty of the loss of 25 vacation days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials



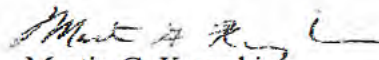
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CRAIG EMHARDT
TAX REGISTRY NO. 936549
DISCIPLINARY CASE NO. 2011-5911

In 2011 and 2012, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2010. He has been awarded 13 medals for Excellent Police Duty, five for Meritorious Police Duty, and an Honorable Mention. In his eight years of service, he has effected 295 arrests. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner – Trials